

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ELAINE ARMSTEAD,

Plaintiff,

v.

1:14-cv-586-WSD

**ALLSTATE PROPERTY AND
CASUALTY INSURANCE
COMPANY,**

Defendant.

OPINION AND ORDER

This matter is before the Court on the parties' deposition designation objections [119], [122] as to the deposition testimony of Mark Gould. The Court notes first that much of the deposition testimony consists of attorney objections, arguments, commentary, comments, or discussion. The parties shall exclude all attorney objections, arguments, commentary, comments, and discussion from the testimony of Mr. Gould that is allowed to be played or read at trial.¹ That is, any

¹ Specifically, in addition to the Court's rulings below, the parties shall exclude the following deposition pages and line numbers: 9:22-25; 10:12-14; 10:21-11:1; 11:21-12:12; 14:3-8; 15:10-14; 17:19-23; 18:24-19:2; 19:6-14; 19:19-21:1; 21:15-16; 24:1-4; 25:8-11; 25:24-25; 26:6-13; 26:21; 27:23-28:1; 28:17-19; 29:10-13; 29:21-30:7; 30:16-17; 30:22; 31:14-21; 32:17; 34:1-4; 34:14-19; 35:7-11; 36:6-14; 36:22-23; 37:9-11; 37:15; 37:20; 37:22-23; 38:10-11; 39:6-25;

questions to and answers by Mr. Gould may be offered at trial. Turning to the parties' specific objections,² the Court rules as follows:

I. ALLSTATE'S OBJECTIONS

Deposition Pages and Line Numbers	Ground for Objection	Ruling
65:2-17	P206: alacrity.com website Lack of personal knowledge [Rule 602] Not properly authenticated [Rule 901] Not relevant [Rule 401] Hearsay [Rule 802]	Objections sustained. Not relevant (Federal Rule of Evidence ("Rule") 402). Confusing (Rule 403). Not authenticated (Rule 901). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).
67:16-68:12	P206: alacrity.com website Lack of personal knowledge [Rule 602] Not properly authenticated [Rule 901] Not relevant [Rule 802] Hearsay [Rule 802]	Objections sustained. Not relevant (Rule 402). Confusing (Rule 403). Not authenticated (Rule 901). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).

169:22; 169:25-170:5; 173:6; 192:7; 232:11; 237:13; 253:13-14; 254:14; 254:24-255:3; 266:14.

² Any objections made but which were not considered in the Court's rulings were considered unfounded or not necessary for deciding the admissibility of the testimony to which objections were asserted.

89:5-96:14	P202: Steamatic Guide-15 years old Taken by Plaintiff's counsel without permission Not properly authenticated [Rule 901] Not relevant [Rule 802] Hearsay [Rule 802]	Objections sustained. Misleading, confusing (Rule 403). Argument of counsel is not relevant (Rule 402). Not authenticated (Rule 907).
100:22-101:13	P10A: summary spreadsheet and Allstate documents Lack of personal knowledge [Rule 602] Not properly authenticated [Rule 901] Hearsay [Rule 802]	Objections sustained. Not relevant that he agreed to the description of the document (Rule 402). Compound question. Relevance not established (Rule 402). Argumentative questioning (Rules 402, 403).
101:20-102:17	P10A: summary spreadsheet and Allstate documents Lack of personal knowledge [Rule 602] Not properly authenticated [Rule 901] Hearsay [Rule 802]	Objections sustained. No authentication or foundation (Rule 901).
109:2-111:11	P10A: summary spreadsheet and Allstate documents Lack of personal knowledge [Rule 602] Not properly authenticated [Rule 901] Hearsay [Rule 802]	Objections sustained. Not relevant (Rule 402). No authentication or foundation (Rule 901).

136:15-146:20	<p>P197: IICRC S100-not proper standard</p> <p>Lack of personal knowledge [Rule 602]</p> <p>Not Relevant [Rule 401]</p> <p>Hearsay [Rule 802]</p> <p>Improper impeachment</p>	<p>Objections sustained. Relevance not established (Rule 402). Confusing, misleading, waste of time (Rule 403). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).</p>
167:4-170:5	<p>P197: IICRC S100-not proper standard</p> <p>Lack of personal knowledge [Rule 602]</p> <p>Not Relevant [Rule 401]</p> <p>Hearsay [Rule 802]</p> <p>Improper impeachment</p>	<p>Objections sustained in part and overruled in part. Objections overruled as to 169:13-24. Objections sustained as to remainder. Not relevant (Rule 402). Confusing, misleading (Rule 403). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).</p>
170:24-178:1	<p>P197: IICRC S100-not proper standard</p> <p>Lack of personal knowledge [Rule 602]</p> <p>Not Relevant [Rule 401]</p> <p>Hearsay [Rule 802]</p> <p>Improper impeachment</p>	<p>Objections sustained in part and overruled in part. Objections overruled as to 170:24-171:2; 172:2-11; 173:3-14; 175:16-176:14. Objections sustained as to remainder. Not relevant (Rule 402). Confusing, misleading (Rule 403). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).</p>

180:16-182:22	<p>P197: IICRC S100-not proper standard Lack of personal knowledge [Rule 602] Not Relevant [Rule 401] Hearsay [Rule 802] Improper impeachment</p>	<p>Objections sustained in part and overruled in part. Objections overruled as to 180:16-181:11; 182:13-183:1. Objections sustained as to remainder. Not relevant (Rule 402). Misleading, confusing (Rule 403). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).</p>
185:24-189:25	<p>P187: Steamatic corporate website Lack of personal knowledge [Rule 602] Not Relevant [Rule 401] Hearsay [Rule 802] Not properly authenticated [Rule 901] Improper impeachment</p>	<p>Objections sustained in part and overruled in part. Objections overruled as to 187:13-189:1. Objections sustained as to remainder. Not relevant (Rule 402). Misleading, confusing (Rule 403). Hearsay (Rule 802)</p>
190:1-193:9	<p>P197: IICRC S100-not proper standard Lack of personal knowledge [Rule 602] Not Relevant [Rule 401] Hearsay [Rule 802] Improper impeachment</p>	<p>Objections sustained in part and overruled in part. Objections overruled as to 192:3-193:9. Objections sustained as to remainder. Not relevant (Rule 402). Misleading, confusing (Rule 403). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).</p>
205:18-212:16	<p>P191: photo taken in Gould' office without permission Not properly authenticated [Rule 901] Not Relevant [Rule 401]</p>	<p>Objections sustained. Not relevant (Rule 402). Prejudicial, confusing, misleading (Rule 403). Not authenticated (Rule 901).</p>

212:7-215:24	Discussion regarding suspected trespass Not relevant [Rule 401]	Objections sustained. Not relevant (Rule 402).
215:25-219:1	Previous depositions and lawsuits Not relevant [Rule 401]	Objections sustained. Not relevant (Rule 402). Not authenticated (Rule 901).
219:2-221:6	P202: Steamatic Guide-15 years old Taken by Plaintiff's counsel without permission Not properly authenticated [Rule 901] Not relevant [Rule 802] Hearsay [Rule 802]	Objections sustained. Not relevant (Rule 402). Not authenticated (Rule 901).
229:14-238:17	P202: Steamatic Guide-15 years old Taken by Plaintiff's counsel without permission Not properly authenticated [Rule 901] Not relevant [Rule 802] Hearsay [Rule 802]	Objections sustained in part and overruled in part. Objections overruled as to 232:4-19; 237:7-238:5. Objections sustained as to remainder. Not relevant (Rule 402). Confusing, misleading (Rule 403). Not authenticated (Rule 901)
242:24-248:2	P190: website printout Not properly authenticated [Rule 901] Not relevant [Rule 802] Hearsay [Rule 802] Improper impeachment	Objections sustained in part and overruled in part. Objections overruled as to 243:6-244:19. Objections sustained as to remainder. Not relevant (Rule 402). Confusing, misleading (Rule 403). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).

248:3-252:10	P191: website printout Not properly authenticated [Rule 901] Not relevant [Rule 802] Hearsay [Rule 802]	Objections sustained. Not relevant (Rule 402). Confusing, misleading (Rule 403). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).
252:11-254:7	P192: website printout Not properly authenticated [Rule 901] Not relevant [Rule 802] Hearsay [Rule 802] Improper impeachment	Objections sustained in part and overruled in part. Objections overruled as to 253:8-254:7. Objections sustained as to remainder. Not relevant (Rule 402). Confusing, misleading (Rule 403). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).

254:7-277:22	P188, P189, P190, P191, P192, P193: website printouts Not properly authenticated [Rule 901] Not relevant [Rule 802] Hearsay [Rule 802] Improper impeachment	Objections sustained in part and overruled in part. Objections overruled as to 254:7-255:11; 261:7-9; 261:14-21; 262:25-265:1; 265:4-10; 265:22-267:4; 268:4-272:12; 272:22-273:3; 273:10-274:15; 274:23-275:10; Objections sustained as to remainder. Not relevant (Rule 402). Confusing, misleading (Rule 403). Hearsay: statements in learned treatises only admissible if called to attention of an expert (Rule 802; Rule 803(18)).
277:19-280:22	Statement regarding suspected trespass	Objections sustained. Not relevant (402). Confusing (403).


II. PLAINTIFF'S OBJECTIONS

Deposition Pages and Line Numbers	Ground for Objection	Ruling
9:8-25	Personal knowledge (Rule 602) Hearsay (Rule 802) Lack of authentication (Rule 901)	Objections overruled for reasons stated in the Order on Motions <i>in Limine</i> [121] ("Order")
10:1-13	Personal knowledge (Rule 602) Hearsay (Rule 802) Lack of authentication (901)	Objections overruled for reasons stated in the Order.

10:14-11:1	Personal knowledge (Rule 602) Hearsay (Rule 802) Lack of authentication (901)	Objections overruled for reasons stated in the Order.
11:2-12:18	Personal knowledge (Rule 602) Hearsay (Rule 802) Lack of authentication (901)	Objections overruled for reasons stated in the Order.
13:17-14:8	Personal knowledge (Rule 602) Hearsay (Rule 802) Lack of authentication (901)	Objections overruled for reasons stated in the Order.
14:15-15:14	Personal knowledge (Rule 602) Hearsay (Rule 802) Lack of authentication (901)	Objections overruled for reasons stated in the Order.
15:17-16:24	Personal knowledge (Rule 602) Non-responsive	Objections overruled. Testimony is relevant (Rule 402).
17:6-21:1	Hearsay (Rule 802).	Objections overruled for reasons stated in the Order.
21:2-22:1	Personal knowledge (Rule 602) Hearsay (Rule 802) Non-responsive	Objections overruled for reasons stated in the Order.
22:2-24:2	Failure to disclose pursuant to Rule 26 Personal knowledge (Rule 602) Hearsay (Rule 802) Lack of authentication (901) Not qualified as expert witness (Rule 702)	Objections overruled. For the reasons stated in the Court's Orders [70], [75], [86], the Court finds the objected-to testimony is not expert testimony requiring disclosure, and the testimony is relevant.
24:3-26:3	Hearsay (Rule 802)	Objection overruled for reasons stated in the Order.
27:15-28:1	Hearsay (Rule 802)	Objection overruled for reasons stated in the Order.

29:17-20	Speculation	Objection overruled. Mr. Gould may testify to ordinary payment practices and requirements for payments, and such testimony is relevant.
30:2-4	Non-responsive	Objection sustained.
30:14-15	Hearsay (Rule 802)	Objection overruled.
31:6-32:10, 14, 15-24	Hearsay (Rule 802)	Objection overruled for reasons stated in the Order.
32:7-9	Non-responsive	Objection overruled.
32:25-37:11, 15, 18-23	Hearsay (Rule 802)	Objection overruled for reasons stated in the Order.
34:4-35:13	Hearsay (Rule 802)	Objection overruled for reasons stated in the Order.
36:13-37:11	Not qualified as expert witness (Rule 702) Hearsay (Rule 802)	Objections overruled for reasons stated in the Order. For the reasons stated in the Court's Orders [70], [75], [86], the Court finds the objected-to testimony is not expert testimony requiring disclosure, and the testimony is relevant.
37:22-38:11	Personal knowledge (Rule 602)	Objections overruled for reasons stated in the Order.

SO ORDERED this 6th day of July, 2016.


 WILLIAM S. DUFFEY, JR.
 UNITED STATES DISTRICT JUDGE